

*Appendix H*

*Public Road Off-site Improvement  
Construction Applications and Forms*

**Public Roads Off-Site Construction Process:**

- Applicant submits the following:
  - Approved roadway construction drawings
  - Construction Agreement
  - Itemized Cost Estimate
  - Security, if required
- After review and approval of the documentation and security, the Public Works Engineer may issue a Notice to Proceed, allowing the developer to proceed with construction.
  - Note: The Public Works Engineer may request a preconstruction meeting prior to issuance of a permit.
- After completion of work, DelDOT performs inspections (See Section 6.4 for more detail regarding inspection responsibilities for Level I and Level II projects)
- Applicant then submits the following:
  - As-built construction plans
  - Completion letter from the local land use agency
  - Contact information letter from the maintenance association
  - Release from liabilities
- Once DelDOT is satisfied with the construction, the inspector shall recommend final acceptance.

**Applications and Forms**

Electronic versions of the following forms may be located in the Development Coordination Portal within the “Doing Business with DelDOT” portion of the DelDOT website (<http://deldot.gov/information/business/>).

Agreement No. \_\_\_\_\_

**CONSTRUCTION AGREEMENT**

**FOR**

**PUBLIC ROADS (OFF-SITE IMPROVEMENTS)**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Delaware Department of Transportation, hereinafter called DelDOT and \_\_\_\_\_ whose address is \_\_\_\_\_ hereinafter called Developer and \_\_\_\_\_ whose address is \_\_\_\_\_ hereinafter called Engineer.

**WITNESSETH THAT**

Whereas, the Developer intends to complete the construction of

Street Name	From	To	Length

located in \_\_\_\_\_ (County) in accordance with the approved plans prepared by \_\_\_\_\_ (Consultant Firm) and the provisions of this Agreement herein called Project.

Whereas, Developer will coordinate with DelDOT the scheduling of a public information meeting to provide additional information and answer questions prior to issuance of the Notice to Proceed.

Whereas, the Developer will substantially complete all roadwork outlined in the approved plans and specifications within \_\_\_\_ calendar days from the Notice to Proceed.

Whereas, the Engineer shall provide construction inspection to ensure that street construction is in accordance with the approved Plans, Specifications and this Construction Agreement. It will be a requirement that the Engineer have an active Agreement with DelDOT for construction inspection services.

NOW THEREFORE, the parties do hereby agree as follows:

1. The Developer shall provide DelDOT two reproducible set of the approved street construction plans prepared in accordance with the requirements of the Delaware Department of Transportation (DelDOT) on 22"x36" for the streets listed in this Agreement. The Developer agrees that all construction shall be in accordance with approved construction plans, DelDOT's *Standard Specifications* currently in force on the date of this Agreement, Special Provisions for non-standard construction items, and DelDOT's *Standard Construction Details*.
2. Prior to the start of construction, the Developer shall submit and obtain approval from DelDOT of the following items:
  - a. Copy of the contract between Developer and the Contractor. The Contractor must be licensed, or have initiated the license application as required by Section 2505, Chapter 25, Title 30, of the Delaware Code.
  - b. Security Agreement in the amount of 100% of the estimated construction cost as approved by DelDOT.
3. Prior to the start of construction, the Developer or the Engineer shall submit for approval to DelDOT a work plan that provides for the policies and procedures to be followed by the Developer during the administration of the contract. The work plan shall address the preconstruction meeting, inspection procedures, change orders, plan revisions, quality assurance, final inspection, final closeout, time extensions, and other issues as identified by DelDOT or the Developer. No work within DelDOT right-of-way shall begin until a Notice to Proceed has been issued by DelDOT.
4. The Engineer acting on behalf of DelDOT will provide inspection to ensure that the construction is in accordance with the approved plans and specifications. The Engineer is required to be on the job site whenever roadway work is being done. The Developer shall provide the Engineer with access to all parts of the work and furnish such information and assistance as is required by the Engineer to make a complete and detailed inspection as described in the *Standard Specifications*.
  - a. The Engineer, acting on behalf of DelDOT, will be responsible for inspection of workmanship to verify that the construction complies with the plans and specifications. The Engineer will be required to provide a Project Supervisor and any necessary construction inspectors to administer the Project on behalf of DelDOT according to DelDOT's *Standard Specifications* and *Construction Manual*.

- b. The Engineer will be responsible for the implementation of all applicable practices and procedures outlined in Part D “Field Practices and Procedures” of DelDOT’s *Construction Manual*. The presence of the Engineer’s approved personnel is required during any and all roadway work within existing or proposed public right-of-way at all times. Failure to comply will result in removal of Project staff and stoppage of all construction activities until Project staffing requirements are met.
  - c. The Engineer shall submit to DelDOT a roster of all personnel contemplated to be assigned to the Project, together with a detailed resume with respect to education, experience and NICET certification of each individual included on the roster.
  - d. Inspection
    - i. General - During the progress of all associated construction work under the assigned Project, The Engineer shall furnish appropriate field inspection of workmanship at the site of the work during the period that the work is actually being performed to determine and verify reasonable conformity of all work to the plans and specifications. This shall include inspection of construction equipment to determine conformity with the Project specifications outlined in Part D of DelDOT’s *Construction Manual*.
    - ii. Materials Inspection - DelDOT will provide materials inspection and testing services. This work will include, but not be limited to, concrete testing, asphalt concrete testing, and soils testing. The Developer is technically responsible for the notification of readiness and scheduling of materials inspection for those items analyzed prior to delivery. The Engineer shall be responsible for confirming that this work has been done. The Engineer shall be responsible for documenting material inspections and tests that have been performed at the Project site.
    - iii. Field Reports - All inspectors shall perform written daily reports and field notes; these shall be retained in the field files for reference. A Project diary shall also be maintained for the Project. Diaries must be kept current within three working days.
    - iv. Daily, Weekly and Special Reports - The Engineer shall make daily and weekly reports, and other special reports as required by DelDOT in accordance with the development of the work.
    - v. As-Built Plans - For the purpose of preparing as-built plans, the Engineer shall retain one set of record prints of the construction plans. These shall be kept up-to-date by the substitution of revised plan sheets by marks for minor changes that have been made, and by notes from the inspector’s daily reports. The as-built plans shall show in red ink any alterations made in foundations; locations, lengths and elevations of pipe culverts; side ditches, ditch paving, and other drainage items added or altered; final checked stationing; and all other significant variations from the original plans.
5. During construction, the Developer agrees to control traffic in accordance with the *Delaware Manual on Uniform Traffic Control Devices (Delaware MUTCD)*. During construction, The Developer shall be responsible for the safety of the general public, the work force and equipment, and the work site. It is not intended that DelDOT or the Developer assume the Contractor’s sole and absolute responsibility for the safety of the general public, the work force and equipment, and the work site.

6. Installation of utilities shall be in accordance with DelDOT's Utility Manual. All utilities, with exception of service laterals, shall be located behind the curb or when curbs do not exist, outside the travel lane. The Developer agrees to coordinate the construction with the utility companies in accordance with the requirements of DelDOT.
7. Regulatory signs and street signs shall be furnished and installed in accordance with the *Delaware MUTCD*.
8. DelDOT may require revisions to the construction plans as required by field conditions, the costs of any changes required to the construction plans shall be the responsibility of the Developer.
9. The Developer may request revisions to the approved construction plans by making a written request to DelDOT's Construction Engineer. Such request shall be approved by DelDOT prior to the start of construction of the proposed revisions.
10. Interior streets and the contiguous highway system shall be kept clear of mud and debris as a result of construction activities at all times.
11. The Developer shall request the Engineer and DelDOT personnel to make the first final inspection when the construction is complete. The Developer agrees to complete all work to the satisfaction of the Engineer and DelDOT including those items listed in the first final inspection report within the time specified.
12. The Engineer shall furnish DelDOT, at the first final inspection, a print of the approved "As-Built" construction plan annotated in red to show all revisions necessitated by field conditions.
13. The Developer shall save harmless DelDOT from all unpaid bills, debts or obligations of whatever nature owed by the Developer to any person, firm, corporation, subcontractor, supplier or the like arising from the construction.
14. This Agreement shall become void if the Developer fails to obtain a Notice to Proceed within one year of the date of plan approval for road construction.
15. Failure to complete the road construction as outlined in the approved plans and specifications within the calendars days assigned by this Agreement will result in the assessment of liquidated damages. These damages are outlined in the Supplemental Specifications and will require direct payment by the Developer.
16. Failure to complete all aspects of the road construction in accordance with this Agreement may result in forfeiture of all or a portion of the security furnished to DelDOT, in such an amount required to complete the road construction; or the assessment of liquidated damages, if and as outlined in the *Standard Specifications*; and other such action as may be permitted by the Delaware Code.
17. On completion of all aspects of the construction to the satisfaction of the Engineer, the Engineer shall provide a written certification to DelDOT that the construction has been completed in accordance with the plans and specifications. The certification shall be accompanied by an as-built plan prepared in accordance with the requirements of *Development Coordination Manual*.

IN WITNESS WHEREOF, the parties hereto have duly executed this letter Agreement in quadruplicate, under their respective seals, the day and year first above written.

**Department of Transportation**

\_\_\_\_\_  
Subdivision Engineer

**District**

\_\_\_\_\_  
Public Works Engineer

**Developer**

Name: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

**Engineer**

Name: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

**SAMPLE LETTER OF CREDIT**

**FOR**

**PUBLIC ROAD OFF-SITE IMPROVEMENT CONSTRUCTION**

Bank Letterhead

Address to District Public Works Engineer in appropriate District as follows:

<p><b>New Castle County:</b></p> <p>Public Works Engineer  DelDOT Canal District  250 Bear-Christiana Road  Bear, DE 19701  (302) 326-4679</p>	<p><b>Kent County:</b></p> <p>Public Works Engineer  DelDOT Central District  930 Public Safety Blvd.  Dover, DE 19901  (302) 760-2433</p>	<p><b>Sussex County:</b></p> <p>Public Works Engineer  DelDOT South District  23697 DuPont Blvd.  Georgetown, DE 19947  (302) 853-1340</p>
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**RE: Irrevocable Commercial Letter of Credit No.** \_\_\_\_\_

\_\_\_\_\_ (name of public road),

Tax Parcel No. \_\_\_\_\_,

Property location: \_\_\_\_\_, in \_\_\_\_\_ County,

Agreement No. \_\_\_\_\_

Dear Sir or Madam:

We hereby establish our Irrevocable Commercial Letter of Credit in favor of the State of Delaware,  
Department of Transportation as beneficiary at the request of and for an account of

\_\_\_\_\_ (Developer),

for an amount or amounts not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_).

This Letter of Credit is subject to the following terms and conditions:

Effective Date: \_\_\_\_\_

This credit is to be available by sight draft being presented to

\_\_\_\_\_ (Name of Bank)

at its main office at \_\_\_\_\_ (Address).

All drafts so drawn must bear the clause "Drawn Under" and the following information: Bank Name, Letter of Credit Number, and date.

The sight draft must be signed by the Director of the Division of Maintenance and Operations stating that " \_\_\_\_\_ (Developer) has failed to perform construction of the public road, in accordance with the Construction Agreement for public road construction and the irrevocable Letter of Credit in favor of the State of Delaware, Department of Transportation, pertaining thereto. Demand is hereby made in the amount of the enclosed draft."

This Letter of Credit will expire on \_\_\_\_\_. The Bank agrees to notify the State sixty (60) calendar days prior to expiration to permit a request for an extension or to permit DelDOT to draw thereon. The Bank agrees that such notice will be sent by registered mail to the appropriate Public Works Engineer as indicated in the table below and shall contain the public road name, applicant name, and County where the property is located.

<b>New Castle County:</b>  Public Works Engineer DelDOT Canal District 250 Bear-Christiana Road Bear, DE 19701 (302) 326-4679	<b>Kent County:</b>  Public Works Engineer DelDOT Central District 930 Public Safety Blvd. Dover, DE 19901 (302) 760-2433	<b>Sussex County:</b>  Public Works Engineer DelDOT South District 23697 DuPont Blvd. Georgetown, DE 19947 (302) 853-1340
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The Bank agrees that such notice would be effective only if it is sent by registered mail. In the event such notice is not given, this Letter of Credit shall automatically renew until such notice is received. It shall then expire sixty (60) calendar days from the receipt of such notice. This credit will automatically terminate as of the date DelDOT notifies Bank that it has accepted the Project for maintenance.

Except as otherwise stated herein, no modifications or revocations may be made by the undersigned to the irrevocable credit created hereby, without the express written approval of the Public Works Engineer, Delaware Department of Transportation.

All bank charges connected with this Letter of Credit are for the account of the Developer.

This Letter of Credit is neither negotiable nor assignable.

Very Truly Yours,

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(Signature)

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(Printed Name)

**SURETY AGREEMENT**

**FOR**

**PUBLIC ROAD OFF-SITE IMPROVEMENT CONSTRUCTION**

KNOW ALL PERSONS by These Presents that: \_\_\_\_\_ (applicant)  
whose address is \_\_\_\_\_  
hereinafter called "Developer" and \_\_\_\_\_  
as surety legally authorized to do business in Delaware,  
  
whose address is \_\_\_\_\_  
hereinafter called "Surety" are held firmly bound unto the State of Delaware  
  
in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
(said sum being 100 percent of the total price agreed upon by DelDOT and the Developer for the  
construction of the public road as set forth in the **Construction Agreement No.** \_\_\_\_\_),  
to be paid to the State of Delaware for the use and benefit of DelDOT if the Developer fails to meet the  
conditions of this obligation.

SEALED with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOW THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if the Developer, who is  
responsible for the construction of the public road set forth in the aforesaid Agreement for the property  
known as \_\_\_\_\_,  
fails to construct such public road in accordance with the provisions of the fully executed Construction  
Agreement for Public Roads (off-site improvements), as determined by DelDOT, the bond shall be  
forfeited in favor of the State of Delaware. Bond forfeiture shall occur within sixty (60) days of receipt of  
written notification by DelDOT. Should the Developer complete all construction in accordance with the  
aforesaid Agreement, then this obligation shall be void and of no effect, or else shall be and remain in full  
force and virtue until such Project is accepted by DelDOT.

*DelDOT Development Coordination Manual*

EXECUTED by the parties hereto the day and year first herein written.

**For Surety Company:**

Attest:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Position Title)

**For Developer:**

Attest:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Position Title)

**ESCROW AGREEMENT**

**FOR**

**PUBLIC ROAD OFF-SITE IMPROVEMENT CONSTRUCTION**

KNOW ALL PERSONS by These Presents that: \_\_\_\_\_ (applicant)

whose address is \_\_\_\_\_

and whose Employer Federal Identification Number is \_\_\_\_\_,

hereinafter call "Developer" having furnished DelDOT a certified check

in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_ )

(said sum being 100 percent of the total price agreed upon by DelDOT and the Developer for the construction of the public road as set forth in the **Construction Agreement No.** \_\_\_\_\_ ),

to be deposited into DelDOT's Escrow Account, does hereby relinquish said amount to the State of Delaware for the use and benefit of DelDOT, to which payment will and truly be made we bind ourselves, our successors and assigns, firmly by these presents.

SEALED with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOW THE CONDITIONS OF THIS OBLIGATION are such that if the Developer, who is responsible for the construction of public road set forth in the aforesaid Agreement for the property known as \_\_\_\_\_, fails to construct such public road in accordance with the provisions of the fully executed Construction Agreement for Public Roads (off-site improvements), as determined by DelDOT, the funds shall be forfeited in favor of the State of Delaware. Forfeiture shall occur within sixty (60) days of receipt of written notification by DelDOT. Should the Developer complete all construction in accordance with the aforesaid Agreement, then this obligation shall be void and of no effect, or else shall be and remain in full force and virtue until such Project is accepted by DelDOT. Upon acceptance of all work to the satisfaction of DelDOT the funds held in escrow shall be released by DelDOT.

*DelDOT Development Coordination Manual*

EXECUTED by the parties hereto the day and year first herein written.

Attest: DelDOT

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Position Title)

Attest: Owner/Developer

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Position Title)

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public Signature \_\_\_\_\_

**NOTICE TO PROCEED**

Date

Company

c/o

Address 1

Address 2

SUBJECT:

Dear Sir or Madam:

This letter shall serve as a “Notice to Proceed” with permanent road construction for construction of the public road as set forth in the **Construction Agreement for Public Roads No.** \_\_\_\_\_.

All work shall be performed in accordance with the following documents:

- Construction drawings approved by DelDOT on \_\_\_\_\_.
- Pre-construction meeting minutes issued by DelDOT on \_\_\_\_\_.
- Construction Agreement For Public Roads (off-site improvements).
- DelDOT *Standard Specifications*.
- DelDOT *Standard Construction Details*.

Please contact DelDOT’s Transportation Solutions (Maintenance & Operations) if you have any questions.

*DelDOT Development Coordination Manual*

Sincerely

Name

DelDOT Transportation Solutions (M&O or Public Works)

**RELEASE FROM LIABILITIES**

As a condition of the acceptance of the Project by the Delaware Department of Transportation the streets specified in the **Construction Agreement No.** \_\_\_\_\_ in \_\_\_\_\_ (County), I, as Owner and Developer do hereby release and save harmless the Delaware Department of Transportation (DeIDOT) from any and all manners of action, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands what-so-ever, in law and equity and further agree to assume the defense of any claims and pay any and all costs legally incurred by DeIDOT in defense thereof arising from any actions by me or my Agents or Contractors created during the course of construction of streets listed in the aforesaid Construction Agreement, provided such actions against DeIDOT are initiated before acceptance of the Project by DeIDOT or not later than six months after such date of acceptance.

The undersigned further swears and avers that there are no mechanic's liens or judgments affecting the streets listed in the aforesaid Construction Agreement.

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public Signature \_\_\_\_\_

Owner/Developer:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Position Title)

\_\_\_\_\_  
(Date)